

creditors of Smith prior to his application, and he alleges that there are such creditors not paid, and therefore the trustee cannot pass a valid title free from all incumbrances, such as he professed to pass when he made the sale.

4th. That Smith having applied for the benefit of the insolvent laws, could not as against his creditors make a valid and legal mortgage, and Boyle as his trustee, was not authorized to unite therein, and his so doing had no legal effect, and therefore the mortgage and proceedings in the cause did not authorize the trustee to pass a valid and binding title to the property such as he professed to pass when he offered the same for sale.

5th. That the proper parties were not made in this cause.

6th. That since the sale exceptant has become informed of the following circumstances, of which he was altogether ignorant when he made the purchase. That Smith applied for the benefit of the insolvent laws in 1836, and that Boyle was duly appointed his permanent trustee. That on the 1st of December, 1841, Smith executed a mortgage to one John N. Smith, to secure the sum of \$1526, and that subsequently on the 24th of December, 1848, the mortgage on which the decree was passed was executed by Smith and Boyle to Speed. That on the 17th of November, 1849, a bill was filed in Baltimore County Court, as a court of equity, by the administrator of John N. Smith, against said Thomas Smith and Speed, to foreclose said mortgage of the 1st of December, 1841, and to sell the property. That said Smith and Speed appeared to said case, and that the proceedings therein are still pending and unsettled, and said Speed, notwithstanding the pendency of said proceedings, offered the property for sale in manner and form hereinbefore mentioned, and this exceptant had no knowledge of the same at the time of the said sale.

7th. That Speed, when he offered the property for sale, in fact offered it under a deed of trust, which he alleged had been given him by Smith, as well as under the decree in this case, but that these facts are not set forth in the report of sale made by the trustee, and that said report is also informal and imper-